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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1964

No. 1102

GERTRUDE CROMBIE, *Petitioner,*

vs.

HELEN F. CROMBIE, *Respondent.*

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I

STATE COURT'S DECISION APTLY PRESENTS STATEMENT OF THE CASE

By misstatements and omissions of pertinent facts, petitioner postulates the false premise that she was denied life insurance benefits without due process of law. Respondent opposes the petition upon the ground that the claim is unsound and that no valid or sustaining reason is shown or exists for the exercise of

this Court's discretionary certiorari jurisdiction for review under 28 U.S.C., §1257, or otherwise.

Significantly, the decision of the District Court of Appeal of California in this case, appended to petitioner's brief, is unassailed on either factual or legal bases by petitioner; hence, in the interest of brevity, the opinion, written by Honorable Presiding Justice, Murray Draper, unanimously concurred in by Associate Justices, Byrl R. Salsman and Preston Devine, and subsequently, on a Petition for Rehearing, and then affirmed on a Petition for Hearing in the Supreme Court of California, is incorporated herein by reference as if set out at length herein, and respondent respectfully requests this Honorable Court to read and consider this California decision as part of respondent's opposing brief.

II

PETITIONER IN ERROR AS TO ASSUMED FACTS

The core of petitioner's claimed grievance is that respondent not only failed to present the most essential evidence of which the case was susceptible, but that such alleged failure was without prior notice or warning to petitioner and without her expectation and to her "utter surprise."

Both petitioner and respondent, in the Trial Court, sought affirmative relief on their separate and independent claims and both offered and had received in evidence proof deemed competent, relevant and ma-

terial. Respondent offered and had received in evidence nine (9) exhibits, whereas, petitioner sought and had received in evidence only one (1), to wit: Defendant's and Cross-Complainant's Exhibit "A".

Specific reference to the proceedings wholly negatives petitioner's contentions of an unfair trial (RT 46:7-9), viz:

> "Mr. Sloane: And I have just one document, one little tag—one document that I wanted to introduce into evidence; and counsel didn't want to include this among his offer.
>
> And this is an acknowledgment by the insurance company of the fact that he did request them, and they do accept his request to make the two parties beneficiaries, fifty-fifty each."

Although the husband's attempt to remove his first wife as sole beneficiary of his group policy and to cut the second wife in as to one-half of the proceeds thereof, without the first wife's consent, and without the knowledge or approval of the Trial Court, was invalid, the Trial Court admitted the only proof offered by petitioner, consisting of said "tag". However, the Court at the time pointedly observed, in part (RT 48:1-7):

> "The Court: * * * —if there was a violation of his agreement and a violation of a court order, it would be an idle gesture anyway, wouldn't it?
>
> Mr. Brewer: Yes, it would.
>
> The Court: I don't see that it makes any difference, actually.
>
> Let it be received in evidence as Defendant's (Gertrude Crombie) 'A'."

Petitioner not only made no objection during the trial to respondent's introduction of eight exhibits, embracing the group insurance policy around which the case revolves, Respondent's Exhibit "7", duly authenticated by the Vice President of Prudential, as carrier, but petitioner's attorney Sloane admitted in open Court that by doing so, respondent was presenting part of petitioner's own case (RT 9:19-23), viz:

> "The Court: Well, you have no objection, I take it, Mr. Sloane?
>
> Mr. Sloane: No. In fact, counsel is going to present part of my case by the time he finishes introducing those exhibits."

Objection, if any, that petitioner ever had to subject Group Insurance Policy was withdrawn by petitioner's counsel during the trial (RT 25:11-15), viz:

> "Mr. Sloane: Excuse me; I am—Let me finish my statement. I am willing to withdraw my objection since it's all there, and one certificate covers the two, but I did feel that that understanding should be made clear at this time, that there really are two distinct policies."

Witness, Walter R. Hayden, Public Service Representative of the carrier, Equitable Life Assurance Society, under cross-examination by petitioner's attorney Sloane, referring to Respondent's Exhibit "7", the Group Life Insurance Policy involved, testified, in part (RT 34:1-6), viz:

> "The Witness: Well, no opinion of mine is necessary. There is the contract, and it's certified by the president—the vice-president of the Society that they are true and exact copies to the

best of his knowledge. The original policies are in the hands of the American Tel & Tel—or the International Tel & Tel."

Further, petitioner's counsel, again referring to Respondent's Exhibit "7", the file copy of Group Life Insurance Policy 3088, with the attached affidavit of Vice President, Charles F. Andolsek, admitted in open Court during the trial that he had no objection to its introduction in evidence (RT 35:8-12), viz:

(Mr. Sloane) "Q. Yes. Well, that's all right. I have no objection to the introduction of it.

The Court: All right. Do you have any other questions, Mr. Sloane?

Mr. Sloane: No further questions."

Thus, it conclusively appears from the trial record that petitioner was not thwarted nor otherwise denied due process, but had her only offer of evidence received as Petitioner's Exhibit "A", and her counsel consented to the introduction of all of respondent's nine (9) exhibits, except Exhibit No. "9", a letter from one of the carrier's attorneys disclaiming any intention upon the part of the carrier to favor either litigant.

III

PETITIONER FURTHER IN ERROR AS TO LAW ASSUMED APPLICABLE TO CASE

Although not mentioning, discussing or showing lack of applicability of the law as applied by the Courts of California to the instant case, the tone of petitioner's brief vaguely suggests that Federal juris-

diction law was ignored and flouted; hence, *Mutual Life Ins. Co. v. Franck,* 9 Cal. App. 2d 528, and *Mahony v. Crocker,* 58 Cal. App. 2d 196, the two California decisions cited in the opinion of the California District Court of Appeal, upholding the Trial Court in this action, annexed to plaintiff's petition, are contrary to the rule on similar facts followed by Federal jurisdiction. However, such assumption, if it exists, is wholly inaccurate, since the Federal Court in cases before it, under facts similar to those of the instant case, has not only referred to, but adopted the California rule.

For instance, *Metropolitan Life Insurance Company v. Enright,* 231 Fed. Supp. 2d 275, dealing with the identical question posed by the instant case, cites and approves the *Franck* case, supra, and likewise decides that rights adjudicated by a divorce decree transcend insurance contract rights, holding, at p. 277:

> "The applicable portion of the decree of divorce provides:
>
> "' * * * the plaintiff shall maintain a policy of life insurance upon his life, in the amount of Six Thousand Dollars ($6,000.00) in the Metropolitan Life Insurance Company, bearing policy number 2231G [the number of the policy here involved], with the defendant as the irrevocable beneficiary therein, and with the right in the defendant to name a successor beneficiary, in the event of her prior death * * *.'
>
> "Defendant Enright maintains that under the divorce decree and the property settlement agreement, Marie Rankin became irrevocable bene-

ficiary with the right to name a successor beneficiary (although she did not do so), and she thereby acquired a vested right in the policy *which right was not divested by Rankin's subsequent attempted change of beneficiary nor by Marie's own death.*

"[1] It is well established that terms of a property settlement agreement may preclude the insured from making a change of beneficiary even though he be given this right by terms of the insurance policy. *Western Life Insurance Company v. Bower,* 153 F. Supp. 25 (D. Mont. 1957); *Equitable Life Assur. Soc. of United States v. Wilkins,* 44 F. Supp. 594 (E.D.N.Y. 1942); *Mutual Life Ins. Co. of New York v. Franck,* 9 Cal. App. 2d 528, 50 P. 2d 480 (3d D. Calif. 1935)." (Emphasis ours.)

Thus, the California and the Federal rule being the same with respect to facts such as those involved in this case, renders petitioner's assumption to the contrary, sheer illusion.

IV

NO FEDERAL OR QUESTION OF GENERAL INTEREST INVOLVED AND REVIEW BY CERTIORARI WHOLLY UNJUSTIFIED

The respective claims involved here are pinpointed by a Court-approved contract between the husband as the insured and his first wife, the respondent, as irrevocable beneficiary, and presents no Federal or question of general import. In fact, petitioner and

respondent, in writing, acknowledged that their respective claims involved the interpretation of California law only (CT 11:5-6), viz:

> " * * * the rights of these claimants hinges upon the divorce and community property laws of the State of California."

Also, petitioner and respondent, in writing, further acknowledged that a State Court is the proper forum, with no suggestion of a Federal question, (CT 10:6-11), viz:

> "Said claimants, * * * desire * * * to litigate their respective rights to said insurance proceeds in the Superior Court of the State of California in the light of the laws of this State applicable to the situation."

V

ARGUMENT

The persistence to disagree and appeal demonstrated by petitioner, the second wife, on fanciful and untenable grounds, notwithstanding her acknowledgement that her claim is controlled by the divorce and community property laws of California, and that the Superior Court of California is the proper forum, strongly suggests an implacable and unreasoning belligerency toward the respondent, the first wife, the irrevocably-designated sole beneficiary.

The opinion of the Appellate Court of California, appended to petitioner's brief, rests upon adequate independent State grounds, was affirmed by the Su-

preme Court of California, so that whatever the motive, petitioner has utterly failed to show grounds under Rule 21 of this Honorable Court, for the exercise of certiorari jurisdiction.

The alleged Federal issue advanced by petitioner here, and clearly not meeting standards for the exercise of wholly discretionary certiorari jurisdiction, is so insubstantial as to border on the frivolous.

Further, the authorities cited by petitioner do not even remotely relate, nor are they pertinent to the actual facts or law of this case. Since an abstract and academic discussion of them would serve no productive purpose, further comment is withheld as the actual and precise issues of this case were correctly resolved by the judgment of the California Courts below.

In effect, petitioner seeks a review of this California judgment, embracing adequate and independent, State grounds. This Court has consistently refused to use its discretionary power to review under such situation. *Fox Film Corp. v. Muller,* 296 U.S. 207, 80 L.Ed. 158.

The only power of this Court over State judgments, such as involved here, is to correct them to the extent they incorrectly adjudge Federal rights. *Whitney v. California,* 274 U. S. 357, 362-3; *Safeway Stores v. Oklahoma,* 360 U.S. 342, n. 7.

VI

CONCLUSION

The decision below, turning upon its own narrow domestic relations and personal contract grounds, and controlled exclusively by the divorce and community property laws of the State of California, will affect few, if any, other than these litigants; hence, we respectfully submit that petitioner has failed to show the requisite or any grounds for a review by this Court and that this Petition for Writ of Certiorari should be denied.

Dated, San Francisco, California,
June 10, 1965.

Respectfully submitted,
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In the Supreme Court
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No. 83

GERTRUDE CROMBIE, *Petitioner,*

vs.

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REPLY BRIEF OF PETITIONER

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